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ATTORNEYS FOR PLAINTIFF

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GERALD HESTER, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

VISION AIRLINES, INC.,

Defendant.

Case No.: 2:09-CV-00117-RLH-RJJ

EXPEDITED SECOND MOTION FOR EXTENSION OF TIME

Plaintiff Gerald Hester ("Hester") moves for an extension of time up to and including Monday, May 31, 2010, within which to make his disclosures pursuant to Fed. R. Civ. P. 26(a)(2) ("Rule 26(a)(2)"). As grounds, Plaintiff states as follows:

1. Pursuant to this Court's Scheduling Order [D.E. 103], Plaintiff is required to file his "[d]isclosures specified in Fed. R. Civ. P. 26(a)(2) . . . on or before April 29, 2010."

2. Pursuant to LR 6-1, this is the second time Plaintiff has requested an extension of the deadline related specifically to Rule 26(a)(2). The Court originally denied Plaintiff's

1 Unopposed Motion for Extension of Time [D.E. 105] without prejudice at a hearing held on
2 April 14, 2010. The Court, however, has previously extended the scheduling deadlines twice in
3 this case, which altered the deadline both times for Rule 26(a)(2) disclosures. *See* D.E. 84, 103.

4 3. Plaintiff has engaged the expert Barry Mukamal ("Mukamal"), a Certified Public
5 Accountant and a partner at Marcum Rachlin LLP, to analyze the following: (1) the amount of
6 money Vision billed the contractors above it for hazardous duty pay and for the salaries of the
7 employees that operated Vision's Air Bridge Program flights; (2) the amount of money Vision
8 received from the contractors above it for hazardous duty pay and the salaries for the Air Bridge
9 Program employees; (3) the amount of money Vision paid its Air Bridge Program employees for
10 operating the Air Bridge Program flights; and (4) the damages owed to the Class. (*See* Affidavit
11 of Barry Mukamal ¶ 4, attached hereto as Ex. A.)
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13 4. Mukamal is unable to complete his expert report by the April 29, 2010 deadline,
14 because he does not have all of the documents necessary to complete his report. (*Id.* at ¶¶ 6-10.)
15 Mukamal does not have these documents because Vision has not produced them to Plaintiff,
16 despite Vision's promises to do so, and this issue is subject to Plaintiff's Renewed Motion to
17 Compel [D.E. 93] filed on January 20, 2010 and its Supplement in Support of Plaintiff's
18 Renewed Motion to Compel [106] filed on April 9, 2010.
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20 5. For example, Mukamal cannot compare the amounts Vision billed for and
21 collected in salaries and hazardous duty pay against what Vision paid its Air Bridge employees
22 because he does not have the following documents: (1) Vision's contract with McNeil
23 Technologies, Inc. ("McNeil") in its non-redacted format with all modifications; (2) Vision's
24 non-redacted bid documents for the McNeil phase; (3) the non-redacted invoices Vision
25 submitted to McNeil; (4) wire transfer receipts reflecting payment from McNeil, Capital
26 Aviation, Inc., and Computer Sciences Corporation; and (5) Vision's payroll records for the
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1 entire class period in native format with associated metadata. (*Id.*)

2 6. Specifically, Mukamal is unable to determine the amount Vision received in
3 hazardous duty pay and salaries for the Air Bridge Program employees from May 1, 2005
4 through July 15, 2007, because he does not have all of the wire transfer receipts reflecting
5 payment of Vision's invoices. (*Id.* at ¶ 5.) Moreover, it will take Mukamal a considerable
6 amount of time to calculate Vision's payroll records for this time period because Vision's payroll
7 records were produced in paper format even though they appear to have been created in an
8 electronic format. (*Id.*) Vision has agreed to produce all of its electronic records in native
9 format with associated metadata but has not done so. Again, this is addressed in Plaintiff's
10 Renewed Motion to Compel [D.E. 93] and Plaintiff's Supplement in Support of Plaintiff's
11 Renewed Motion to Compel [D.E. 106].

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13 7. Mukamal cannot determine what Vision billed or received from the contractors
14 above it for salaries and hazardous duty bonus for the Air Bridge Program employees from July
15 15, 2007, through the present, because Vision has not produced any of the wire transfer receipts
16 from McNeil for payment of its invoices and, "has redacted all of the financial information from
17 the [McNeil] invoices it produced, . . . redacted its contract with McNeil . . . and has not
18 produced all of the contract modifications to the McNeil contract." (*Id.* at ¶ 7.)

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20 8. The flight logs Vision produced are not sufficient to complete the expert report,
21 because they are incomplete and only cover the time period of May 2005 through July 2007.
22 Once again, Vision has failed to produce documents from the McNeil phase, without
23 justification. Moreover, the flight logs only identify the "destination of the trips, flight times,
24 and individual crew members" onboard the flights. (*Id.* at ¶ 9.) The flight logs only corroborate
25 what Vision paid its employees and do not reflect what Vision billed or collected from the
26 contractors above it for the salaries and hazardous duty pay for the Air Bridge Program
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1 employees. (*Id.*)

2 9. Furthermore, McNeil has filed objections to Plaintiff's subpoena, which Plaintiff
3 served in order to obtain the documents from McNeil that Vision previously agreed to produce to
4 Plaintiff. McNeil intends to seek a hearing on a not yet filed Motion to Quash on May 7, 2010,
5 which is after Plaintiff's expert disclosures are due.

6
7 10. Accordingly, Plaintiff's expert will not be able to complete his expert report until
8 he obtains addition documents as sought in Plaintiff's Renewed Motion to Compel [D.E. 93].
9 Plaintiff respectfully requests an extension of thirty days to make his expert disclosures, which
10 Plaintiff hopes will be enough time to allow this Court to rule on its Renewed Motion to Compel
11 and order Vision to produce those documents that it previously agreed to produce. However,
12 depending on when these documents are ultimately produced by Vision, Plaintiff's expert may
13 require more time to complete his report, and Plaintiff may have to come back before this Court
14 to seek additional time based on Vision's strategy of delay.

15
16 11. Plaintiff contacted counsel for Vision this morning and asked for his position on
17 this motion. Counsel for Vision represented that he needed to speak to his client about the matter
18 and that he would call counsel for Plaintiff back in two hours. Counsel for Vision never returned
19 counsel for Plaintiff's call. Plaintiff called counsel for Vision on his cellular telephone twice and
20 left messages at his office on three separate occasions this afternoon but never heard back from
21 Vision's counsel. Vision did not oppose Plaintiff's first Motion for Extension of Time. Plaintiff
22 has elected to file without waiting for counsel for Vision's position because the Court will be out
23 of circuit next week and Plaintiff hopes the Court will rule on the instant motion before it leaves,
24 so that Plaintiff and the Class do not incur additional expense for the preparation of an expert
25 report that will by necessity require supplementation when Vision finally produces the
26 documents it originally agreed to produce by January 7, 2010.

WHEREFORE, Plaintiff requests an extension of time to make its Rule 26(a)(2) disclosures on or before Monday, May 31, 2010.

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By: /s/ David M. Buckner
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I HEREBY CERTIFY that a true copy of the foregoing has been served via the Court's CM/ECF system on April 15, 2010 on Harold P. Gewerter, Esq., 2705 Airport Drive, North Las Vegas, Nevada 89032.